Gorman Crossing, LLC and Elm Street Development, Inc.,

Petitioners

Before The Zoning Board of

Howard County, Maryland

ZB Case 1078M

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DECISION AND ORDER

On September 16, 2009, the Zoning Board of Howard County, Maryland considered the petition of Gorman Crossing, LLC and Elm Street Development, Inc. for an amendment to the Zoning Map of Howard County to reclassify 7.51 acres of land from the PSC (Planned Senior Community) Zoning District, with a Preliminary Development Plan for an Age-Restricted Housing Development, to the R-SA-8 (Residential: Single Attached) Zoning District. The subject property is located on the north side of Gorman Road approximately 100 feet west of Horsham Drive and is identified as Tax Map 47, Grid 16, Parcels 492 and 743; 9320 Gorman Road.

The notice of the hearings was advertised, the subject property was posted, and adjoining property owners were mailed notice of the hearing, as evidenced by the certificates of advertising, posting and mailing to adjoining property owners, all of which were made part of the record. Pursuant to the Zoning Board's Rules of Procedure, all of the reports and official documents pertaining to the petition, including the petition, the Technical Staff Report of the Planning and Zoning, and the Planning Board's recommendation, were made part of the record. The Department of Planning and Zoning and the Planning Board both recommended approval of the petition.

The Petitioners were represented by Katherine L. Taylor, Esq. Several residents, representing themselves, appeared in opposition to the petition. The Zoning Counsel, Eileen Powers, Esq., appeared to support the existing zoning of the subject property.

After careful evaluation of all the information presented, the Zoning Board of Howard County, Maryland makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

- 1. This proposed piecemeal rezoning request involves a proposed reclassification of the 7.51 acre subject property from the PSC (Planned Senior Community) to the R-SA-8 (Residential: Single Attached) Zoning District. The subject property is comprised of two adjoining parcels, the site of the former Ev-Mar Mobile Home Park. In the 2004 Comprehensive Zoning, the subject property was zoned R-MH (Residential Mobile Home). In September of 2006, the owner of the subject property requested, and was granted, a proposed rezoning to the PSC Zoning District, a floating zone.
- 2. Mr. Paul Revelle, the rezoning petitioner in the PSC rezoning case, testified on behalf of the Petitioner. Mr. Revelle indicated that he was an owner of the original Petitioner, Gorman Crossing, LLC, but that it became necessary to assign its contract rights in the subject property to Elm Street Development, Inc. when Dale Thompson, another owner of the original Petitioner, became financially insolvent. Mr. Revelle added that Elm Street Development, Inc. has been assigned Gorman Crossing's contract rights but that it had been involved in the project from the beginning as a consultant.
- 3. Mr. Revelle provided some history of the zoning of the subject property. He indicated that in the 2003-2004 Comprehensive Zoning process, the property owner requested R-SA-8 zoning for the subject property which was split zoned at that time in the R-MH and R-12 Zoning

Districts. This request was rejected due to the objections of the Ev-Mar Mobile Home Park residents, and the entire property was zoned R-MH instead.

Mr. Revelle testified that the Ev-Mar Mobile Home Park closed in 2005 and that the PSC zoning was subsequently pursued by the property owners and granted by the Zoning Board in 2006 in ZB Case 1062M. Notwithstanding that zoning approval, litigation between the Park residents and the property owners continued, causing delay in the PSC development of the subject property. Mr. Revelle indicated that by the time the litigation was concluded, there was no market for PSC development.

- 4. Mr. Revelle testified that the subject property, without the grant of rezoning, may only develop as presently zoned in the PSC District because the PSC Zoning Regulations in effect at the time of the 2006 rezoning did not include the concept of PSC as an overlay zone, allowing development in the underlying district up until the time of "final approval of all required Comprehensive Sketch Plans and/or Site Development Plans and Development Criteria by the Planning Board" as allowed by CB 4-2209 which became effective in April of 2009. In addition, Petitioners acknowledged that because the Site Development Plan had been finally approved for the subject property, it would be locked into developing under the PSC Zoning Regulations, even under CB 4-2009's provisions.
- 5. Mr. Revelle testified that at the time of the subject property's PSC rezoning in 2006, the Zoning Board assumed that the PSC rezoning was based on a need for age-restricted housing. Mr. Revelle testified that, while that assumption may have been true in 2006, it has proven to not be true over time, thus rendering the PSC zoning of the subject property a mistake. Mr. Revelle presented the following factors to support this contention of mistake:

- a. PSC zoning is need-based and there is no longer any need for PSC zoning; the resale price and sales volumes of age-restricted housing have declined substantially more than non-age-restricted housing, and there is currently a 15 year supply of age-restricted housing in the development pipeline;
- b. The assumptions that seniors would want specialized housing, that they would retire, and that they would have the equity in their existing homes to buy age-restricted housing, have all proven to be less true than anticipated in 2006;
- c. The PSC Zoning District only allows age-restricted housing as permitted uses and there is no market for those uses;
- d. The 50 dwelling unit minimum requirement in the PSC District would be difficult to meet on the subject property because of the space problems caused by wider units for the first floor bedrooms needed for age-restricted housing, and by the greater parking areas associated with condominium development;
- e. There is no undeveloped land available for townhouses in the Southeast region of Howard County except for a few parcels;
- f. The need for entry level housing, especially in light of BRAC, could be satisfied by the proposed rezoning, without affecting a non-existent need for empty-nester housing; and
- g. The proposed 58 R-SA-8 dwelling units would be just as compatible with the nearby Bowling Brook Farms development as the proposed 87 PSC dwelling units, and the latter has already been determined to be compatible by the Zoning Board ZB Case 1062M; the building height limits are lower and the setback requirements are greater in the R-SA-8 District than in the PSC District.

- 6. Mr. Revelle also testified that the MIHU requirements are the same for the R-SA-8 District as the PSC District, and that safe road access for any development of the subject property has already been positively determined by the Zoning Board in ZB Case 1062M.
- 7. Mr. Joseph Rutter, Jr., Principal with Land Design and Development, Inc., and former DPZ Director, testified in favor of the petition. Mr. Rutter agreed with Mr. Revelle's testimony that the mistake in PSC zoning was not just a general mistake but a specific one related to the subject property due to its size. Mr. Rutter elaborated that smaller PSC sites like the subject property aren't conducive to the provision of amenities unlike the larger PSC sites, such as Waverly Woods.

Mr. Rutter also contended that the changes that are occurring because of BRAC (Base Realignment and Closure), including the construction of a headquarters at Fort Meade and other planned construction has become a reality, and that this has caused a need for workforce housing. Mr. Rutter's contentions are based on a dual neighborhood definition as shown on Applicant's Exhibit 3, which shows both an immediate neighborhood and an overall area for the subject property.

DPZ's defined neighborhood of the subject property is shaped differently than Petitioner's defined immediate neighborhood but is similar to it in size. There was no evidence presented of any rezonings or other specific physical changes within any of these defined proposed neighborhoods. Mr. Rutter's claims of change were based on identifying the subject property as a logical location, close to Fort Meade, for housing for the new employees that would be hired as part of the BRAC expansion.

8. Both Mr. Rutter and Russell Dickens, Elm Street Development, Inc. testified that R-SA-8 was the most appropriate zoning for the subject property, if the Board found mistake in the

PSC zoning of the subject property, because R-SA-8 zoning would be most compatible with the predominantly townhouse development in the surrounding area. Zoning of the subject property to R-MH zoning would be inappropriate because the subject property could not meet the 10 acre minimum District size for the R-MH District.

- 9. Several area residents testified in opposition to the proposed rezoning. Their opposition was based on a desire for the subject property's development under the existing PSC Zoning District, because of an age restricted development's lesser burden on schools and roads, or if rezoning was necessary, rezoning to a zone that permitted only single-family detached development. These area residents also expressed their concerns regarding the adequacy of current parking, sidewalks and playgrounds in their neighborhood.
- 10. The Board finds that, based on the evidence presented as summarized in the Board's Finding of Fact 5, the Petitioner has established sufficient evidence of mistake in the PSC zoning of the subject property to justify the requested rezoning, and it makes the following findings of fact as to this issue:
- a. The assumptions upon which the 2006 PSC rezoning of the subject property was based, that there was an unmet need for age-restricted housing, and that the 7.51 acre subject property could be feasibly developed with age-restricted housing under the PSC District, are no longer true;
- b. At the present time there is no need for age-restricted housing because of the 15 year supply of such housing in the pipeline;
- c. The subject property is particularly infeasible for PSC zoning because of its relatively small size, which makes compliance with the 50 dwelling unit minimum difficult to achieve; and

- d. The rezoning of the subject property to some other zoning district is necessary for it to be able to feasibly develop because it cannot develop according to the requirements of its previous zoning, R-MH, because: 1) R-MH was no longer the subject property's underlying district when the PSC Zoning Regulations were amended by Council Bill 4-2009 to allow development in a PSC Overlay according to its underlying zoning district requirements if PSC development did not reach final approval; and 2) the subject property had an approved SDP, which would not have allowed it to develop to the underlying R-MH zoning under CB 4-2009's provisions.
- 11. The Board finds that the Petitioner has not established sufficient evidence of change in the character of the neighborhood of the subject property, under either Petitioner's alternate/dual neighborhood or DPZ's neighborhood definition because the no evidence of any alleged actual changes within any of those neighborhoods was presented.
- 12. The Board finds that the most appropriate zoning of the property if it is to be rezoned is the requested R-SA-8 Zoning District for the reasons stated below. The Board notes that the subject property should not be rezoned to the previous R-MH District because it cannot be developed according to the 10 acre minimum District size for the R-MH District. Further, despite the desire of those opposing the rezoning that only single-family detached residences be developed on the subject property, the property would have to be rezoned R-20 to require this result, and the Board finds that this would not be appropriate since none of the properties adjoining the subject property are zoned R-20, and the predominant residential land use in the area is townhouse development. The Board also notes that the property owner requested R-SA-8 zoning for the subject property in the 2004 Comprehensive Zoning, and that development under

R-SA-8 will produce a maximum of 58 dwelling units, 29 less than could be developed under the existing PSC District.

The opposition's concerns with parking, sidewalks and playgrounds would exist under any residential development and will have to be addressed in the development process. This case was presented without site plan documentation, so the Board lacks the authority to attach conditions to its zoning approval. In addition, the opposition's concerns regarding the effect of the non-age-restricted development of the subject property under R-SA-8 on area schools and roads, as opposed to PSC zoning, will be addressed according to the requirements of the Adequate Public Facilities Ordinance in the development process.

CONCLUSIONS OF LAW

- 1. The Petitioners, as one seeking a piecemeal zoning reclassification, have the burden of demonstrating substantial change in the character of the neighborhood or a basic and actual mistake in the comprehensive zoning of the subject property. If this burden is not met, the Zoning Board is not permitted to grant rezoning.
- 2. In presenting a case for piecemeal rezoning based on change in the character of the neighborhood, the test is usually based on alleged changes occurring since the last comprehensive zoning. However, in this case the subject property was rezoned in 2006 to the PSC Zoning District from its R-MH Comprehensive Zoning at the request of the property owner, so the Board must determine if change has been established since that 2006 piecemeal rezoning. In a "change" case, the Petitioner bears the burden of defining the neighborhood of the subject property with which the alleged changes have occurred, and establishing the changes in conditions which have occurred in that neighborhood for the applicable period, in this case since the 2006 PSC rezoning.

Based on the Board's Findings of Fact 7 and 11, the Petitioners have not alleged or shown any actual physical changes, rezonings or other changes in conditions in any of the proposed neighborhoods, and therefore have not presented sufficient evidence of change to overcome the strong presumption of correctness attached to the PSC Zoning so as to justify the requested rezoning.

- 3. The Petitioners, based on the Board's Findings of Fact 5 and 10, have presented sufficient evidence of mistake in the PSC rezoning of the subject property in 2006 to overcome the strong presumption of correctness attached to that PSC rezoning. Petitioners have established that the assumptions upon which the PSC rezoning was based in 2006, that the PSC rezoning would meet a need for age-restricted housing development that could be feasibly provided on the subject property, have proven to be incorrect over time with changing circumstances, namely the oversupply and resulting unmarketability of age-restricted housing and the infeasibility of providing age-restricted housing on the 7.51 acre subject property.
- 4. R-SA-8 zoning is the most appropriate zoning category for the subject property based on the surrounding zoning and the predominantly townhouse development in the area based on the Board's Findings of Fact 8 and 12.

For the foregoing reasons, the Zoning Board of Howard County, Maryland, on this day of <u>December</u> 2009, hereby GRANTS the Petitioners' request for rezoning of the 7.51 acre subject property from the PSC to the R-SA-8 Zoning District.

ATTEST:

Robin Regner

Administrative Assistant

PREPARED BY:

HOWARD COUNTY OFFICE OF LAW

MARGARET ANN NOLAN COUNTY SOLICITOR

Paul T. Johnson/

Deputy County Solicitor

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